



April 5, 2000

Lieutenant Brad Lancaster
Amarillo Police Department
200 E. 3rd
Amarillo, Texas 79101-1514

OR2000-1300

Dear Lieutenant Lancaster:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133802.

The Amarillo Police Department (the "department") received a request for incident report numbers 98-72706, 98-113652, 98-113733, 99-14467, 99-19733, 99-61701, and 99-101657. You claim that the requested documents are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that all of the requested incident reports are protected by common law privacy under section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Id.*

The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 262 (1980), this office stated that information about a patient's injury or illness might be protected under common law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illnesses, convulsions and seizures, or emotional and mental distress. *See also* Open Records Decision No. 539 at 5 (1990) (information concerning emotional state may be protected by common law privacy). After careful review, we conclude that the incident reports are not excepted from disclosure by a common law right of privacy under section 552.101.

You also argue that incident report numbers 98-113652, 98-113733, 99-14467, 99-61701, and 99-101657 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

In order to establish the applicability of either subsection (1) or (2) of section 552.108 to a requested criminal file, a law enforcement agency should inform this office of the status of the case the information concerns. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to *pending* criminal investigations or prosecutions. On the other hand, to establish the applicability of section 552.108(a)(2), a governmental body must demonstrate that the requested information relates to a criminal investigation that has *concluded in a final result* other than a conviction or deferred adjudication. Subsection (a)(2) cannot apply to an open criminal file because the investigation or prosecution for such a file has not concluded.

In your brief to this office, you appear to claim the protection of section 552.108(a)(1) by stating that these "case investigations have not been completed [and have] not been adjudicated[.]" However, you also appear to claim the protection of section 552.108(a)(2) by stating that these cases "have not resulted in a conviction or deferred adjudication against any person." Moreover, the submitted documents indicate that report numbers 98-113652 and 99-61701 are "exceptionally cleared", report numbers 99-14467 and 99-101657 are "inactive", and report number 98-113733 is "unfounded". We are therefore unable to determine from your arguments and the submitted documents whether the investigations are pending or completed. Because you have not adequately explained the status of incident report numbers 98-113652, 98-113733, 99-14467, 99-61701, and 99-101657, we find that these reports are not excepted from disclosure under section 552.108. Accordingly, except as noted below, we conclude that you must release all of the incident reports to the requestor.

We note that section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license issued by an agency of this state. We have marked information in incident report number 98-72706 that you must withhold pursuant to section 552.130. We caution that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

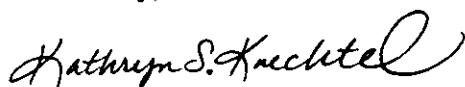
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 133802

Encl. Submitted documents

cc: Ms. Nita Varoz
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